

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 540 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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SABARKANTHA DIST CO OP MILK PRO UNION LTD

Versus

CONCILIATION OFFICER

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Appearance:

MR DARSHAN M PARIKH for Petitioner

MR DA BAMBHANIA for Respondent No. 1

MR NS DESAI for MR YN OZA for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/05/98

ORAL JUDGEMENT

The petitioner before this court is a Co-operative Society registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as the 'society'). The respondent No.1 is a Conciliation Officer appointed under the Industrial Disputes Act, 1947

(hereinafter referred to as the Act). The respondent No.2 (hereinafter referred to as "the workman") is the employee of the said Society. The Society had initiated disciplinary proceeding against the respondent No.2 for certain acts of misconduct. Consequent to the said proceeding, the respondent No.2 was dismissed from service under order dated 8th October, 1985. It is not disputed that at the time of dismissal from service, the workman was paid wages for one month by depositing the same in the Bank account of the workman. At the relevant time, certain demands raised by the employees of the Society, including the respondent No.2, were pending before the Conciliation Officer - the respondent No.1 herein. In view of the provisions contained in section 33 (2) (b) of the Act, the Society paid the wages to the respondent No.2 for one month by depositing the same in the Bank account as aforesaid, and also made an application to the respondent No.1 for approval of the action taken by the employer. The respondent No.1 under its order dated 20th January, 1986, made on Approval Application No.IDM/26/85, refused such approval on the ground that the wages for one month payable to the workman ought to have been tendered to him in person giving him an opportunity to refuse or to accept the same. Feeling aggrieved, the petitioner has preferred the present petition.

The question which arises for consideration by this court is whether one month's wages payable to the delinquent workman under section 33 (2) (b) of the Act is required to be tendered in person or the same can be validly tendered by depositing the same in the Bank account of the delinquent. The question is no more res-integra . This court (Coram : Mr. Justice M.B.Shah & Mr. Justice R.K.Abichandani ) in its decision dated 2nd December, 1991, rendered in Special Civil Applications Nos. 539/86 and 719/86 has held that such tender of wages, and filing of an application for approval before the Conciliation Officer, are due compliance with the conditions imposed under section 33 (2) (b) of the Act. For the reasons recorded in the above referred judgment of the Division Bench, I hold that in the instant case the Society has validly discharged its obligation under section 33 (2) (b) of the Act and action of refusal of approval by the respondent No.1 impugned herein, is bad and illegal. The impugned order of the respondent No.1 made on Approval Application No. IDM/26/85 on 20th January, 1986 (Annexure-A to the petition) is hereby quashed and set aside.

Petition is allowed. Rule is made absolute. There shall be no order as to costs.

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JOSHI